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99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-473

COMPLETED 8 4 23 ORIGINAL

CONSENTING TO AN AMENDMENT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII TO THE HAWAIIAN HOMES COMMISSION ACT, 1920

FEBRUARY 25, 1986.—Referred to the House Calendar and ordered to be printed

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Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.J. Res. 17]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the joint resolution (H.J. Res. 17) to consent to an amendment enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920, having considered the same, report favorably thereon with and amendment and recommend that the joint resolution as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the resolving clause and insert the following in lieu thereof:

That, as required by section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 4), the United States hereby consents to all amendments to the Hawaii Homes Commission Act, 1920, as amended, adopted between August 21, 1959, and June 30, 1985, by the State of Hawaii, either in the Constitution of the State of Hawaii or in the manner required for State legislation, except for Act 112 of 1981.

PURPOSE

The purpose of H.J. Res. 17, introduced by Mr. Akaka, is to provide congressional consent to an amendment to the Hawaiian Homes Commission Act of 1920 which was passed by the Hawaii State Legislature (1982 Hawaii Sess. Laws, 272, hereinafter Act

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272). The Hawaii Admissions Act transferred authority over the Hawaiian Homes Commission Act to the State of Hawaii, and at the same time required congressional consent to certain amendments to the Act proposed by the State.

BACKGROUND

On July 9, 1921, the Congress of the United States passed the Hawaiian Homes Commission Act of 1920 (HHCA). This legislation was enacted to "rehabilitate" Native Hawaiians through a federally-sponsored homesteading program. Under the HHCA, Native Hawaiians, descendants of not less than one-half part blood of inhabitants of the Hawaiian Islands prior to 1778, are eligible to recapture possession of lands which formerly were public lands of the Territory of Hawaii.

The intent of the HHCA is to allow Native Hawaiians to return to the land and thereby regain the mode of living to which their ancestors were accustomed. Under the HHCA, qualifying Native Hawaiians are able to lease a tract of Hawaiian home lands at the nominal cost of $1.00 a year. In addition to providing opportunities for leaseholds for housing, leases are also available to perpetuate the traditional methods of farming and ranching as a means of achieving social and economic well-being.

Under the provisions of the Hawaii Admission Act, ("An Act to provide for the Admission of the State of Hawaii into the Union," March 18, 1959), Congress transferred the management and disposition of the Hawaiian home lands to the State of Hawaii. The HHCA was thereupon adopted as a part of the constitution of the State of Hawaii and responsibility for administration of the HHCA passed to the State, with provisions that the United States government maintain a continuing responsibility to assist Native Hawaiians and achieve the legislative goals of the HHCA.

Section 4 of the HHCA states "that any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in the manner required for State legislation, but the qualifications of lessees shall not be changed except with the consent of the United States."

Act 272 amends the HHCA to change the qualification requirements of successors to Hawaiian Home leases. In accordance with Section 4 of the Admission Act, this legislation has been submitted to Congress for approval.

The purpose of Act 272 is (1) to reduce the successorship requirement for the spouse and children of lessees from fifty percent to twenty-five percent of Hawaiian ancestry, (2) to allow homesteaders to select a successor on or after the commencing date of a lease, and (3) to allow the Department of Hawaiian Home Lands, as trustee of the Act, to select a successor when the lessee fails to designate one.

Currently, the HHCA requires that designated successors to Hawaiian Home lands leases must be of at least fifty percent Hawaiian ancestry. In many instances, homesteaders of fifty percent Hawaiian ancestry have spouses who are non-native Hawaiian and neither the homesteader's spouse nor offspring have the minimum blood requirement to qualify as successors. Act 272 reduces the

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blood quantum requirement of a successor to the lessee to one quarter Hawaiian blood quantum. This change affects successors to leases only.

The State of Hawaii believes that the loss of the family homestead in instances where neither the spouse nor the children meet the current requirement threatens family stability and security, and frustrates the intent of the HHCA of returning the Native Hawaiian to the land in order that the Hawaiian race may be perpetuated. Native Hawaiian lessees must have the assurance and protection under the Act which allows the beneficiary to regard Hawaiian Home lands as ancestral lands. The proposed change reinforcing the concept of ancestral lands and family continuity and discouraging speculation on Hawaiian Home lands.

Since 1975, a total of eight (8) leases were cancelled because the spouse or children of the deceased lessee did not meet the fifty percent Hawaiian blood requirement. In these cases, the appraised value of improvements on the land was paid to the next of kin, less any outstanding indebtedness.

Since 1982, approximately 500 or 16% of the Department of Hawaiian Home lands lessees have requested that upon their death, the appraised value of the improvements be left to their spouse or children. The primary reason for this trend is that the lessee's spouse or children do not qualify as successors to the homestead lease. This lack of continuity in the land provides few incentives to the homesteading family to conscientiously improve and maintain their homes and property.

The relaxation of the blood requirement provided in Act 272 applies only to the surviving spouse and children. All other successors to homestead leases will have to meet the fifty percent blood requirement.

Act 272 also amends the HHCA to provide greater flexibility in designating a successor to the lease. Present law allows a lessee to designate a successor only at the time the homestead is awarded. Act 272 changes this requirement to allow a beneficiary to designate a successor at any time while the homesteader is a lessee.

The designation of a successor is equivalent to a devise of property in a will. Ideally, a lessee should select a successor in complete confindence and conviction. The State of Hawaii believes that by providing greater flexibility in the designation of a successor and by relaxing the blood requirement a lessee will select a qualified successor prior to his death who will have the interest of the family foremost in mind. This will advance the purposes of the HHCA by promoting family stability and social and economic well-being for Native Hawaiians.

Present law authorizes the Department of Hawaiian Home Lands, as trustee, to select a successor to a lessee upon the death of a lessee who has not designated a successor. Act 272 would restrict the department's selection to the qualified surviving spouse, or to a qualified surviving offspring if there is no qualified surviving spouse. This amendment will further the purposes of the HHCA by promoting family stability.

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COMMITTEE AMENDMENT

The Committee adopted an amendment in the nature of a substitute.

As introduced, H. J. Res. 17 provides consent to only one of the many amendments made by the State to the HHCA. Since Hawaii's admission into the Union, a considerable number of amendments have been adopted by the State, as allowed under the language of the Act. As recommended in the 1983 Report of the Federal-State Task Force on the Hawaiian Homes Commission Act, many of these amendments required U.S. consent as a condition precedent to their effectiveness. Under the provisions of State law enacted with some of those amendments, some are, by their terms, effective until the U.S. consents. Others are, by their terms, effective until they are held otherwise because of the absence of U.S. consent.

The amendment adopted by the Committee would approve, en masse, all amendments to the Hawaiian Homes Commission Act previously enacted by the State government, except one. It should be noted that the Task Force and the Department of the Interior have recommended that this action be taken in order to avoid any confusion or challenge with regard to the validity of those amendments. This legislation would, therefore, grant U.S. consent to those amendments to the Act adopted between August 21, 1959, and June 30, 1985.

The amendments being ratified are contained in the following Act of the Hawaii legislature:

Session Laws of Hawaii, 1959, Act 13.
Session Laws of Hawaii, 1961, Act 183.
Session Laws of Hawaii, 1962, Acts 14, 18.
Session Laws of Hawaii, 1963, Acts 114, 207.
Session Laws of Hawaii, 1965, Acts 4, 30, 223, 271.
Session Laws of Hawaii, 1967, Act 146.
Session Laws of Hawaii, 1968, Act 29.
Session Laws of Hawaii, 1969, Acts 114, 259.
Session Laws of Hawaii, 1972, Act 76.
Session Laws of Hawaii, 1973, Acts 66, 130, 173, 220.
Session Laws of Hawaii, 1974, Acts 170, 172, 173, 174, 175, 176.
Session Laws of Hawaii, 1976, Acts 23, 24, 72, 120.
Session Laws of Hawaii, 1977, Act 174.
Session Laws of Hawaii, 1978, Act 229.
Session Laws of Hawaii, 1979, Act 209.
Session Laws of Hawaii, 1981, Acts 90, 158, 192, 203.
Session Laws of Hawaii, 1982, Acts 272, 274, 275.
Session Laws of Hawaii, 1983, Acts 125, 143, 147.
Session Laws of Hawaii, 1984, Acts 27, 36, 37, 199, 260.
Session Laws of Hawaii, 1985, Acts 60, 69, 137, 159, 284, 295.

In order that future amendments requiring U.S. consent receive consideration in a timely manner, the Committee would encourage the Secretary of the Interior and the Governor of the State of Hawaii to enter into consultations regarding the manner in which such amendments will be brought to the attention of Congress. The Committee requests that a report, including a plan of implementation and the appropriate scope of assistance to be provided by each

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party, be submitted to the Committee within 180 days of the passage of this legislation.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that the United States hereby consents to all amendments made by the State of Hawaii to the Hawaiian Homes Commission Act betwen August 21, 1959, and June 30, 1985, except for Act 112 of 1981.

COMMITTEE RECOMMENDATIONS

The Committee on Interior and Insular Affairs, by voice vote on December 4, 1985, ordered H.J. Res. 17 favorably reported to the House with an amendment.

COST AND BUDGET ACT COMPLIANCE

Enactment of H.J. Res. 17 will result in no cost to the United States. The analysis of the Congressional Budget Office follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 5, 1985.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, 1324 Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.J. Res. 17, a bill to consent to amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, as ordered reported by the House Committee on Interior and Insular Affairs, December 4, 1985.

H.J. Res. 17 would grant Congressional consent to 53 amendments to the Hawaiian Homes Commission Act adopted between August 21, 1959 and June 30, 1985, by the State of Hawaii. We estimate that no cost to the federal government, or to state and local governments would result from enactment of this legislation.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

INFLATIONARY IMPACT STATEMENT

Enactment of H.J. Res. 17 will have no inflationary impact.

EXECUTIVE COMMUNICATION

A Departmental report was not received on the legislation. However, a statement was presented by a Departmental witness during November 21, 1985, hearings by the Committee in which the Department raised no objection to the enactment of the legislation.

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OVERSIGHT STATEMENT

The Committee on Interior and Insular Affairs exercises jurisdiction of matters involving Hawaiian native interests. Hearings were held on H.J. Res. 17 on November 21, 1985, which resulted in the Committee's recommendation. It should be noted that in order to facilitate future oversight over the Hawaiian home lands program, the Committee has requested a procedure for bringing future changes approved by the Hawaiian government to the attention of the Congress so that they can be addressed in a timely manner.

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DISSENTING VIEWS

H.J. Res. 17 would grant congressional approval to actions by the Hawaiian State Legislature, including reducing the blood gantum requirement for Native Hawaiian lessees under the Hawaiian Homes Commission Act of 1920.

We are opposed to H.J. Res. 17 primarily because we do not believe that the Committee has taken into consideration the views of the affected people, the currently qualified Native Hawaiians.

In 1921, the Hawaiian Homes Commission Act (HHCA) became law. Its provides a mechanism for Native Hawaiians to recapture possession of aboriginal lands, which have been set aside from public domain lands in Hawaii. Under the HHCA, qualifying Native Hawaiians are able to lease a tract of home lands for a nominal cost ($1/year) for housing. Additionally, they can lease other lands to perpetuate the traditional methods of farming and ranching. The HHCA provides for successors to these leases by qualifying natives. H.J. Res. 17 would change the successorship rules to allow the leases to pass to those Natives who would not themselves qualify for a lease.

Several points became apparent during our hearing. First, qualified Native Hawaiians were not adequately represented at the hearing. It is unclear whether the 9000 qualified Native Hawaiians would support this amendment to the HHCA. In fact, since the hearing we have been contacted by many Native Hawaiians stating their strong opposition to the amendments.

A poll was conducted by the Hawaiian Homes Commission and its results were used to justify the change in the HHCA. Unfortunately, of the 1000 surveys sent out (out of a possible 9000), only 16% responded, and only 57% of those responding supported the amendment. This is not a valid poll or survey for the purpose of changing existing law which would adversely affect a substantial portion of those whom the law was intended to help.

Second, the Administration suggested, and the Committee accepted an amendment to H.J. Res. 17 which would congressionally approve 53 other State-enacted changes to the HHCA. We believe the Committee has not adequately reviewed this set of 53 changes in current law.

Finally, Native Hawaiians have contacted us stating that they believe the proposed amendment to the HHCA will result in a series of lawsuits by other nonqualified Natives based on an equity argument: how can the law treat one class of one fourth blood Natives as qualified, and another class of ¼ blood Natives as unqualified? While we are not sure what merit such an argument has, we do not believe Congress should approve such a change in the law without a thorough examination of all arguments.

With these comments, we cannot support H.J. Res. 17 at this time. We believe the Committee should conduct additional investi-

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gations into the support or opposition of these issues by currently qualified Native Hawaiians, including if necessary additional hearings on the issues, or a survey of qualified Natives.

JOHN MCCAIN.
ROBERT J. LAGOMARSINO.
MICHAEL L. STRANG.
JOE BARTON.
BARBARA VUCANOVICH.
LARRY E. CRAIG.

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